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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KYLE BROWN

Appeal 2010-012249
Application 10/687,714
Technology Center 3600

Before: ANTON W. FETTING, MEREDITH C. PETRAVICK, and MICHAEL W. KIM, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1-27. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6 (2002).

The claimed invention is directed to online comparison shopping (Spec. 1:10-11). Claim 1, reproduced below, is further illustrative of the claimed subject matter.

> 1. A computer-implemented method for identifying acquisition parameters for one or more commodities, comprising the steps of:
>
> identifying said one or more commodities using one or more searchable identification parameters;
>
> defining a monitoring duration during which acquisition parameters for said one or more commodities will be monitored;
>
> monitoring a plurality of publicly-searchable, network-accessible databases for acquisition parameters for said one or more commodities using said one or more searchable identification parameters; and
>
> outputting results of said monitoring step.

Claim 13 stands rejected under 35 U.S.C. § 112, 2nd paragraph, for indefiniteness; claims 1-6 and 8-27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mourad (US 2005/0010494 A1, pub. Jan. 13, 2005) in view of McClung (US 7,107,225 B1, iss. Sep. 12, 2006); and claim 7 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Mourad in view of McClung and Elston (US 2002/0143655 A1, pub. Oct. 3, 2002.

Due to Appellant's failure to respond to the Examiner's new ground

of rejection (Exam'r's Ans. 3-15), we DISMISS the appeal of the rejection against claim 13[1] *sua sponte*[2].

We AFFIRM the obviousness rejections.

ANALYSIS

We are not persuaded the Examiner erred in asserting that a combination of Mourad and McClung renders obvious "monitoring a plurality of publicly-searchable, network-accessible databases," as recited in independent claim 1[3] (App. Br. 6-9). Appellant admits that Mourad discloses "searching only a single, privately constructed database" which includes prices from a plurality of retailers (App. Br. 7). Appellant also admits that McClung discloses "monitoring the price of an item at all vendors having the item for sale to determine if the price is reduced" (App. Br. 7). Appellant asserts, however, that monitoring a plurality of vendors in McClung does not necessarily mean there are a plurality of databases (App. Br. 8). While we agree with Appellant that such a finding may not be inherent to McClung, we also agree with the Examiner that such a finding would have been predictable to one of ordinary skill, especially when combined with Mourad.

First of all, Mourad itself discloses aggregating prices from a plurality

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[1] Claims 14-18 ultimately depend from dependent claim 13.
[2] "If appellant fails to timely file a reply under 37 [C.F.R. §] 1.111 or a reply brief in response to an examiner's answer that contains a new ground of rejection, the appeal ***will*** be *sua sponte* dismissed as to the claims subject to the new ground of rejection." *See Manual of Patent Examining Procedure*, (MPEP) §1207.03(V)(C) (8th Ed., Rev. 8, Jul. 2010) (emphasis added).
[3] We choose independent claim 1 as representative of all claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

of retailers onto server 50 (para. [0052]). One of ordinary skill would have known how to partition server 50 into one or a plurality of databases, thus, it would have been obvious that prices from each of a plurality of retailers could constitute a separate database on server 50. Moreover, having now found the capacity and knowledge of how to employ plural databases, we further find that one of ordinary skill would have found doing so predictable in that the plurality of vendors, in Mourad and McClung, likely have a resulting plurality of websites hosted on a plurality of servers. Each server would be a public database under a broadest reasonable construction. *See In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) ("[d]uring examination [of a patent application, a pending claim is] given [the] broadest reasonable [construction] consistent with the specification, and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art") (internal citation and quotations omitted). Furthermore, it has been established by case law that it would have been within the abilities of one of ordinary skill to separate server 50 into multiple databases. *See In re Dulberg*, 289 F.2d 522, 523 (CCPA 1961).

DECISION

The appeal of claim 13 is DISMISSED.

The decision of the Examiner to reject claims 1-12 and 14-27 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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